IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 187 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMDEO CHUNARAM JAT

Versus

CHANDRA BHURA JET

Appearance:

MR NS SHETH for Petitioner

MR RK SHAH & MR JANAK SHAH for Respondent No.1 to 6

MR BY MANKAD, APP for Respondent No. 7

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 05/12/2000

ORAL JUDGEMENT

The original complainant of Criminal Case No.978/88 which was pending on the file of the learned Metropolitan Magistrate, Court No.16, Ahmedabad, has by filing this Criminal Revision Application under Sec.397

of Criminal Procedure Code, 1973 (In short `Cr.P.C.') challenged legality, correctness and propriety of the order dated 6th April, 1992, passed below application dated 7.2.1992 submitted by original accused with a request to discharge them from the case.

2. Here in this application the revision-petitioner was the complainant while revision-opponents No.1 to 6 were the accused in aforesaid Criminal Case No.978/88 and, therefore, parties will be referred to hereinafter as `complainant' and `respective accused' respectively at appropriate places.

3. The facts leading to this present Criminal Revision Application in a nutshell are as follows:

On or about 30th April, 1988, the complainant filed a private complaint in the Court of the learned Magistrate against six accused for offences punishable under Secs.406, 420 and 114 of IPC. As per that complaint, the complainant is belonging to village Lalasar of Rajasthan. One Bhuraram Ladu had adopted complainant as his son. Before such adoption, the complainant was serving when he was staying in Ahmedabad. Said Bhuraram Ladu was not in a position to stay permanently with the complainant at Ahmedabad and therefore he was residing in the village Lalasar. It is the case of complainant that at the instance of somebody's instigation, Bhuraram Ladu sold field to accused No.2 and thereafter accused No.2 had sold that field to accused No.3,4 and 5 for Rs.30,000/- for which accused No.2 executed a registered sale deed. On coming to know about this fact, complainant went to his village and met his father as well as accused No.2 to 5. Thereafter, the complainant lodged one Civil Suit for specific performance of Shatakhat. When that suit reached to the stage of final hearing, the accused felt that they would not succeed in the suit and therefore accused No.2 to 5 sent accused No.1 and 6 to the complainant. They both had talked with complainant for compromise. Accused No.1 and 6 informed the complainant that if accused No.2 to 5 would pay Rs.30,000/- then they would return the fields by getting sale deed executed in favour of complainant. The complainant accepted that proposal and in continuation of that proposal the complainant paid Rs.30,000/- to accused No.2 to 5 in presence of Hanuman Ratnaji and Prem Ratnaji and thereafter on 6th March, 1988, accused came to the house of complainant at Ahmedabad. At that time they informed the complainant that if complainant would pay rest of the amount, they would get the sale deed executed. On or

about 7th March, 1988, the complainant paid Rs.19,000/- to accused No.2 to 5 who requested complainant to come to village one week thereafter and they would get the sale deed executed. Thereafter, on 16th March, 1988, the complainant went to his village and contacted the accused. The accused informed the complainant that they would get the sale deed executed after some days. Thereafter complainant made repeated requests to the accused but accused did not get the sale deed executed. As per the case of complainant, on or about 24th April, 1988, accused No.1,2 and 6 came to Ahmedabad and contacted the complainant and they informed the complainant that they would neither get the sale deed executed nor did they return the amount. They also gave threat to the complainant that if complainant would make demand for money or request for sale deed, the complainant would be done to death and he would not be allowed to come to the village. With these facts, the complainant lodged his complaint in the court of learned Magistrate on 30.4.88. The learned Magistrate after taking down verification took cognizance against the accused on 30.4.88 and ordered to issue bailable warrant for Rs.500/- against accused for offences punishable under Sec.420 of IPC. The accused appeared before the learned Magistrate and on 7th February, 1992, they submitted an application to discharge them from the case. Thereafter, the learned Magistrate heard the arguments of the learned advocates for both the parties and perused the documents . It appears from record that as offence punishable under Sec.420 of IPC is a warrant triable case, the learned Magistrate has followed the provisions of Chapter 19 Part A of Cr.P.C. and, therefore, the learned Magistrate passed an order under Sec.245(1) and discharged the accused from the case.

Being aggrieved against and dissatisfied with the said order dated 6th April, 1992, of the learned Magistrate by which accused were discharged, the original complainant has preferred this Criminal Revision Application.

4. When this application was taken up for final hearing neither Shri N.S.Sheth, learned advocate for the petitioner nor Shri R.K.Shah, learned advocate for the revision-opponents No.1 to 6 nor Shri Janak R.Shah, learned advocate appeared before the Court. I have heard Shri B.Y.Mankad, learned APP for the opponent No.7-State.

5. I have gone through the order challenged in this application. From order it appears that there is a dispute with regard to an agreement to sell executed by

accused No.2 to 5. The complainant has paid certain amounts as consideration to accused No. 2 to 5. From order it appears that complainant has filed Civil Suit No.51/79 in the Civil Court. Looking to the facts and circumstances of the case, the dispute is of civil nature and therefore the learned Magistrate has rightly discharged the accused from the case. The learned Magistrate has assigned plausible and cogent reasons for arriving at a conclusion that looking to the nature of evidence accused are required to be discharged from the case. There is nothing on record to show that impugned order is illegal, incorrect or improper.

6. In view of what is stated hereinabove, this Criminal Revision Application is devoid of merits and it is required to be rejected and accordingly same is rejected. Rule is discharged. R & P be sent back to the trial Court.

(H.H. Mehta, J.)

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